

## AGREEMENT

THIS AGREEMENT, made this 16 day of September, 2016, by and between Figg Bridge Engineers, Inc., 424 N. Calhoun Street, Tallahassee, Florida, hereinafter referred to as CONSULTANT, and Louis Berger, 412 Mount Kemble Avenue, Morristown, New Jersey, hereinafter referred to as SUBCONSULTANT.

WHEREAS, the CONSULTANT has entered into an Agreement with the Munilla Construction Management (MCM), hereinafter referred to as the CONTRACTOR, for engineering services for the FIU-UniversityCity Prosperity Project as attached as Exhibit A (hereinafter the "Prime Agreement"). Florida International University (FIU) will hereinafter referred to as the OWNER.

WHEREAS, SUBCONSULTANT has been furnished a copy of said Prime Agreement, including amendments, and all applicable contract documents, for its information and is aware of its terms and provisions, and

WHEREAS, the CONTRACTOR and the CONSULTANT desire to retain SUBCONSULTANT for the purpose of performing those services as defined in ARTICLE I - SCOPE OF WORK.

WHEREAS, SUBCONSULTANT is agreeable to undertaking the services under the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed between the parties hereto as follows:

### ARTICLE I - SCOPE OF WORK

#### SECTION 1 - OBLIGATION OF SUBCONSULTANT TO CONSULTANT

The CONSULTANT hereby retains SUBCONSULTANT who agrees to proceed, upon written authorization by the CONSULTANT, with all services necessary to the performance, in proper sequence and in the times specified, of the items of work as outlined in Exhibit B, for the project as required of the CONSULTANT in the Prime Agreement between the CONTRACTOR and CONSULTANT for the project. SUBCONSULTANT also agrees that all work completed by them shall be in accordance with the applicable requirements of the Prime Agreement between the CONTRACTOR and the CONSULTANT for the project.

#### SECTION 2 – SUBCONTRACTING

SUBCONSULTANT shall not subcontract any work covered by this agreement without the prior written approval of CONSULTANT.

## ARTICLE II - COMPENSATION

### SECTION 1 - PROGRESS PAYMENTS

The CONSULTANT shall pay SUBCONSULTANT in accordance with the terms of the CONSULTANT's Prime Agreement with the CONTRACTOR. During the course of the project SUBCONSULTANT shall provide a progress report and an invoice to the CONSULTANT each month, as required. This progress report and invoice shall indicate the percentage of the total work SUBCONSULTANT accomplished to date. This submittal must be to the satisfaction of the CONSULTANT prior to processing the payment.

The CONSULTANT shall attach SUBCONSULTANT's progress report and invoice to the project report and invoice to be furnished to the CONTRACTOR as a basis of monthly partial payments. Upon receipt of partial payments from the CONTRACTOR, the CONSULTANT shall, within thirty (30) days, make payment to SUBCONSULTANT all amounts, less any retainage, invoiced by SUBCONSULTANT for that period. Payment to CONSULTANT under the Prime Agreement is a condition precedent to CONSULTANT's obligation to make payment to SUBCONSULTANT.

### SECTION 2 - FINAL PAYMENT

The maximum amount payable to the SUBCONSULTANT for services described in Exhibit B shall be \$61,000 lump sum. Within thirty (30) days of receipt of the final payment for services of SUBCONSULTANT from the CONTRACTOR, the CONSULTANT shall make final payment to SUBCONSULTANT.

### SECTION 3 - CLAIMS FOR ADDITIONAL COMPENSATION

Should SUBCONSULTANT believe it is entitled to additional compensation beyond that set forth in this Agreement, SUBCONSULTANT shall immediately notify CONSULTANT of the event giving rise to any such claim. Such notification shall in no event be given more than seven (7) days after the first occurrence of any event giving rise to any such claim, and SUBCONSULTANT hereby waives any right to additional compensation for any act or event for which such notice is not given in writing by SUBCONSULTANT to CONSULTANT. In the event of any such claim for additional compensation for any reason, including but not limited to, delay, additional work, work beyond the scope anticipated, work during a period other than the period anticipated, or for any other reason, SUBCONSULTANT hereby agrees to accept as full and final compensation for any such claim the amount, if any, which may be paid by the CONTRACTOR to CONSULTANT on such claim. It is hereby specifically agreed by SUBCONSULTANT that the only obligation of CONSULTANT with regard to any such claim will be to pass on to the CONTRACTOR for the CONTRACTOR consideration and decision regarding the claim of SUBCONSULTANT. It is specifically agreed by SUBCONSULTANT that CONSULTANT shall not be liable to SUBCONSULTANT on any such claim for any amount in excess of that amount which may be paid by the CONTRACTOR to CONSULTANT for such claim. With regard to any such claim, CONSULTANT agrees to act in good faith to forward any such claim by SUBCONSULTANT to the CONTRACTOR.

As to any claim which may be brought by SUBCONSULTANT, SUBCONSULTANT agrees to follow and to be bound by all provisions of the Prime Agreement between the CONSULTANT and the CONTRACTOR. SUBCONSULTANT agrees to bear all expense, including all cost and attorney's fees, incurred by the CONSULTANT in forwarding any such claim of SUBCONSULTANT to the CONTRACTOR and in pursuing such claims on behalf of SUBCONSULTANT.

### ARTICLE III - INSURANCE

The SUBCONSULTANT shall maintain in full force and effect the following minimum insurance during the life of the Subcontract, and where specified for the time period following substantial completion of the Project.

- Property Insurance: SUBCONSULTANT and/or subcontractors are solely responsible for all materials, construction equipment, tools, instruments or instrumentation, or other equipment stored on-site, off-site, or when in transit from the commencement of the job until the project is accepted as completed by the Owner.
- Commercial General Liability Insurance: SUBCONSULTANT must provide Commercial General Liability (CGL) insurance including coverage for premises-operations, independent contractors, products-completed operations, personal injury and contractual liability. The contractual liability must include the tort liability of another assumed in a business contract. The SUBCONSULTANT or his agent shall verify that there is no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage. This insurance shall be maintained throughout the duration of the Project and for a minimum of one year after completion of the work or longer if specified in CONSULTANT's prime agreement. Limits shall be as follows:

Each Occurrence Limit

Bodily Injury/Property Damage Liability	\$1,000,000
Personal Injury Liability	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000

CONSULTANT and OWNER are to be named as an additional insured in the SUBCONSULTANT's policy with respect to this project. Verification of additional insured status shall be furnished to CONSULTANT by mailing a copy of the endorsement of Certificate of Insurance in accordance with the instructions in the EVIDENCE of INSURANCE section of this agreement.

This insurance will apply as primary insurance with respect to any other insurance or self-insurance the CONSULTANT may have or elect to carry with respect to this project or contract.

- Comprehensive Automobile Liability Insurance covering owned, non-owned or hired vehicles with bodily injury limits of at least \$2,000,000.00 for each person and \$2,000,000.00 for each accident and property damage liability limits of at least \$2,000,000.00 for each accident;
- Workers' Compensation: SUBCONSULTANT shall provide and maintain workers compensation and employers liability insurance providing coverage in the state (or states) in which the project is performed. Limits and coverage shall be as follows:

Workers Compensation Insurance	Statutory Benefits
Employers Liability Insurance	\$1,000,000 each accident
	\$1,000,000 policy limit
	\$1,000,000 each employee

Employers Liability Limits of \$500,000 are acceptable, provided the Umbrella Excess Liability provides follow form coverage and is noted in the Certificate of Insurance.

- Umbrella Excess Liability: SUBCONSULTANT shall provide umbrella excess liability insurance on an "occurrence" basis providing "following form" coverage for the underlying coverages outlined above with the following minimum limits:
  - Each Occurrence Limit \$1,000,000
  - Aggregate Limit \$1,000,000

SUBCONSULTANT should have their Agent/Broker confirm that the Umbrella Excess Liability policy provides follow-form Employers Liability coverage and includes Additional Insured status as required by contract.

- Professional Liability: The SUBCONSULTANT will obtain and maintain in full force and effect a DESIGN PROFESSIONAL'S Professional Liability Insurance Policy (or similar Errors & Omissions policy), covering the performance of professional services specified under this Agreement. This policy shall have minimum limits of coverage of \$2,000,000 Per Claim with at least \$3,000,000 Annual Aggregate. Evidence of this insurance may be subject to review by CONSULTANT'S Insurance Broker and shall be satisfactory in form and content to CONSULTANT.

The issuance or maintaining of insurance of any type by the SUBCONSULTANT or CONSULTANT shall not be deemed or construed to release, limit, waive or discharge the SUBCONSULTANT from any or all of the obligations and risks imposed by the Subcontract upon the SUBCONSULTANT, including any liability in excess of the insurance coverages required herein. Neither shall any forbearance nor omission by the CONSULTANT to require proof of insurance from the SUBCONSULTANT before permitting the SUBCONSULTANT to proceed or continue with the Work be deemed a waiver of the CONSULTANT's rights or the SUBCONSULTANT's obligations regarding the provision of insurance under this Subcontract. Such insurance, except professional liability and workers compensation, shall name the CONSULTANT, Figg Bridge Engineers, Inc., its parent, subsidiaries, divisions, and affiliated companies and its officers, directors, employees, agents, heirs, assigns, successors in interest, and representatives, as well as the Owner, as Additional Insureds. Each policy of insurance obtained by SUBCONSULTANT shall provide that the insurer shall defend any suit

against the Additional Insureds, even if such suit is frivolous or fraudulent. Said insurance shall include coverage for all operations, work subcontracted by the SUBCONSULTANT, contractual obligations and products and completed operations. Certificates of Insurance, which comply with the requirements of the Subcontract Documents and are acceptable to the CONSULTANT, shall be delivered to the CONSULTANT prior to the SUBCONSULTANT commencing any Work hereunder.

**EVIDENCE OF INSURANCE:** SUBCONSULTANT shall furnish Certificates of Insurance to CONSULTANT prior to commencement of the work. The certificate holder (and additional insured) should read as follows:

FIGG BRIDGE ENGINEERS, INC.  
ATTN: Gay W. Annin, CPA  
424 N. Calhoun Street  
Tallahassee, Florida 32301

The Certificate(s) of Insurance shall be signed by a duly authorized representative of each insurance company showing compliance with the insurance requirements set forth in this Article. The certificate should expressly state that if there is any material change in coverage (cancellation, expiration, or exclusion of a specifically required coverage such as completed operations) that the SUBCONSULTANT or his agent will make every reasonable effort to notify CONSULTANT at least 30 days prior to such change by written notice.

When requested by CONSULTANT or OWNER, SUBCONSULTANT shall furnish copies of Certificates of Insurance for each subcontractor or SUBCONSULTANT as well.

Additionally, the insurance companies providing coverage must be rated "A-" or better by A. M. Best's most current edition and be licensed in the state in which the work is to be performed. Any exceptions to the requirement of (1) being licensed by the state, or (2) having a Best's "A-" rating or better, must be referred to CONSULTANT for prior approval.

If SUBCONSULTANT fails to maintain the required insurance as outlined above, the OWNER shall have the right, but not the obligation, to purchase said insurance at the SUBCONSULTANT's expense. SUBCONSULTANT's failure to maintain insurance as required may result in termination of this contract at the CONSULTANT's option. However, the failure of the CONSULTANT to demand Certificates of Insurance or evidence of full compliance of these insurance requirements shall not constitute a waiver of the SUBCONSULTANT's obligation to maintain such insurance.

#### ARTICLE IV - COMPLIANCE WITH THE PROVISIONS OF THE AGREEMENT WITH THE CONTRACTOR

SUBCONSULTANT agrees to be bound by all terms and provisions of the CONSULTANT's PRIME Agreement with the CONTRACTOR, and SUBCONSULTANT further agrees, to the extent applicable to its work, to assume toward the CONSULTANT all duties and responsibilities which the CONSULTANT has assumed toward the CONTRACTOR pursuant to the CONSULTANT's Agreement with the CONTRACTOR.

## ARTICLE V - INDEMNIFICATION

SUBCONSULTANT shall indemnify and save harmless CONSULTANT, its agents, representatives and employees, from and against any and all suits, actions, legal proceedings, claims, demands, damages, liabilities, costs and expenses, including attorney's fees, arising out of or in connection with or claimed to arise out of or in connection with any error, omission or negligent act of SUBCONSULTANT or anyone acting in his/its behalf in connection with or incident to this Agreement.

SUBCONSULTANT shall also indemnify and defend CONSULTANT and its agents, representatives, and employees from any claims, demands and damages, including costs and attorney's fees, arising from any injury or death to any employee of SUBCONSULTANT.

## ARTICLE VI - COMMUNICATION WITH THE CONTRACTOR

SUBCONSULTANT agrees that the principal method of communication with the CONTRACTOR is through the CONSULTANT's Project Manager.

## ARTICLE VII - COMMUNICATION WITH OUTSIDE ORGANIZATIONS AND INDIVIDUALS

SUBCONSULTANT agrees that all Project related information is to be held confidential and not to be released to any organization or individual other than those directly involved as a participant in the Project, without the express written consent of the CONTRACTOR. Any requests for information from the press, civic groups, professional groups or other organizations or individuals, shall be passed on to the CONSULTANT for transmittal to the CONTRACTOR for consideration and response.

Any professional credit taken from the project, now or in the future, shall be specific as to the nature of the SUBCONSULTANT's work. Any presentation, orally or in writing, which mentions SUBCONSULTANT's work on or involvement in the project shall also state that Figg Bridge Engineers was the bridge designer on the project. The SUBCONSULTANT shall not publish, display, or otherwise distribute any image or likeness of the project produced as part of the project or by CONSULTANT without the express written approval of the CONSULTANT. Activities requiring such approval shall include, but not be limited to, use of project images on marketing materials, website, and presentations to media and potential clients.

## ARTICLE VIII – DISPUTES

In the event of any dispute between CONSULTANT and SUBCONSULTANT involving any issue related to or arising under this Agreement or any work performed hereunder, any such dispute shall, at the sole option of CONSULTANT, be resolved by binding arbitration conducted pursuant to the Construction Industry Rules of the American Arbitration Association. In the event any such dispute relates to any dispute pending between CONSULTANT and CONTRACTOR, SUBCONSULTANT agrees to be bound by the disputes provisions in the Prime Agreement, and SUBCONSULTANT agrees that it may, at the sole option of the CONSULTANT, be joined in any dispute resolution

procedure involving CONSULTANT and CONTRACTOR if it involves any issue related to or arising under this Agreement or any work performed hereunder. SUBCONSULTANT shall not stop work under this Agreement pending any dispute, unless directed in writing to do so by CONSULTANT.

## ARTICLE IX – TERMINATION

### SECTION 1- TERMINATION FOR CAUSE

The CONSULTANT may terminate this Agreement for cause if the SUBCONSULTANT fails to supply enough properly skilled personnel to perform the required work within the time period set by the CONSULTANT, or if the SUBCONSULTANT fails to make payment to those supplying labor or materials to the SUBCONSULTANT so as to cause claims to be made by such persons or entities against the CONSULTANT, or if the SUBCONSULTANT is otherwise guilty of a breach of any provision of this Agreement, the Prime Agreement, or the Contract Documents. Upon termination pursuant to this clause, any unpaid balance owed to the SUBCONSULTANT may be retained by the CONSULTANT until such time as the final damages which may be incurred by the CONSULTANT as a result of this termination are known. Any such unpaid balance may be used by the CONSULTANT to offset all costs and damages incurred by the CONSULTANT as a result of such termination, including, but not limited to, any excess costs incurred to complete the scope of work of the SUBCONSULTANT as set forth herein, and all costs of the CONSULTANT, including attorneys' fees, incurred as a result of the SUBCONSULTANT's breach, this termination, and the additional contracts necessary to complete the SUBCONSULTANT's scope of work as set forth herein.

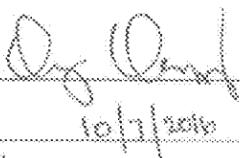
### SECTION 2 – TERMINATION FOR CONVENIENCE

The CONSULTANT shall have the right to terminate this Agreement without cause and without fault of the SUBCONSULTANT upon five (5) days written notice to the SUBCONSULTANT. Upon receipt of such notice, the SUBCONSULTANT shall do no further work under the Agreement except such work as may be set forth in the CONSULTANT's termination notice. The SUBCONSULTANT shall preserve and protect all materials, drawings, calculations and all other work performed by the SUBCONSULTANT under the Agreement and make all such work available to the CONSULTANT. The SUBCONSULTANT shall be entitled to payment, as its sole and exclusive remedy for such termination, for the value of all work satisfactorily performed by the SUBCONSULTANT and tendered to the CONSULTANT, but only to the extent payment for such work has been received by the CONSULTANT from the Owner. The value of such work shall be measured according to the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and affixed their signatures as of the day and year first above written.

ATTEST:

FIGG BRIDGE ENGINEERS, INC.



\_\_\_\_\_  
10/1/2016

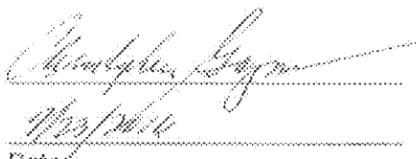
Date:



\_\_\_\_\_  
Linda Figg  
President/CEO

ATTEST:

LOUIS BERGER



\_\_\_\_\_  
10/1/2016

Date:



\_\_\_\_\_  
Michael L. Kirk

By: Michael L. Kirk

Title: Senior Vice President

Date: September 16, 2016

**EXHIBIT B**

**DESIGN SERVICES SCOPE OF WORK  
FIU UNIVERSITYCITY PROSPERITY PROJECT  
FOR MCM**

**PROVIDED BY  
LOUIS BERGER**

September 13, 2016

The Louis Berger Group, Inc. (Louis Berger) will provide independent peer review services for the FIU UniversityCity Prosperity Project in accordance with the RFP.

**Independent Peer Review Scope**

1. Louis Berger will perform Independent Peer Review for the concrete pedestrian bridge plans in accordance with the project and RFP requirements and FDOT Plans Preparation Manual (Chapter 26).
2. The Independent Peer Review will include the following activities:

Item #	Item Description
1	Develop finite element model for the bridge and estimation of demands on all elements due to different load combinations
2	Peer review of foundation plans
3	Peer review of substructure plans
4	Peer review of superstructure plans
3. The Independent Peer Review will be performed for the following submittals:
  - a) Final Foundation and Substructure Plan Submittals
  - b) Final Superstructure Plan Submittals
4. This Independent Peer Review scope of work is for the pedestrian bridge structure components only. The elevator structures and stairways/landings are not included in this scope of work.

**Schedule**

The Independent Peer Review activities will be completed according to the following schedule:

Notice to Proceed (NTP)	August 17, 2016
Modeling and Evaluation of Demand	August 31, 2016
Review of Final Foundation Plans	September 7, 2016
Review of Final Substructure Plans	September 21, 2016
Review of Final Superstructure Plans	October 5, 2016